

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARGILL INCORPORATED,
OCEAN TRANSPORTATION,

20 Civ. 10058

Petitioner,

PETITION

-against-

TRIORIENT LLC,

Respondent.

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PLEASE TAKE NOTICE that CARGILL INCORPORATED, OCEAN TRANSPORTATION (“CARGILL”), by its attorneys Mahoney & Keane, LLP, seeks recognition and confirmation of an Arbitration Award against Respondent, TRIORIENT LLC (TRIORIENT”), and entry of judgment in conformity with the Arbitration Award.

1. This is a maritime case within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and the Court enjoys subject matter jurisdiction over this matter based upon the Federal Arbitration Act, 9 U.S.C. § 1 et seq., 28 U.S.C. §1333, 28 U.S.C. § 133, as well as the Court's pendent, supplementary and ancillary jurisdiction.

2. As the arbitration sub judice was conducted pursuant to the Rules of the Society of Maritime Arbitrators (“SMA”) in New York, New York, and the subject Awards were issued in New York, New York, venue is properly placed before the United States District Court for the Southern District of New York pursuant to 9 U.S.C. § 204.

3. Petitioner, CARGILL, is a foreign corporation with offices and a place of business located at 500 Frank W. Burr Boulevard, Suite 44, Teaneck, New Jersey 07666 and, at all pertinent times was the disponent owner of the M/V JOSCO HUIZHOU (“Vessel”).

4. Respondent TRIORIENT, is a Connecticut corporation with offices and a place of business located at 76 Tokeneke Road, Darien Connecticut 06820, and a registered agent's residence address located at 355 Hill Farm Road, Fairfield Connecticut 06430.

5. By fixture dated February 10, 2020, CARGILL, as disponent owner, and TRIORIENT, as Charterer, entered into a voyage charter of the vessel for the carriage of a cargo of iron ore concentrate from Topolobambo, Mexico to China. See, Exhibits 1-2.

6. In material breach of the contract of carriage, TRIORIENT delayed and ultimately failed to present its cargo for loading, resulting in damages to CARGILL for demurrage, loss of earnings, and underwater hull cleaning expenses, all of which, despite CARGILL's repeated demands, TRIORIENT failed to pay. Id.

7. On or about July 29, 2020, CARGILL called for SMA arbitration in New York, as provided by the terms of the voyage charter, accordingly. Id.

8. The Panel was duly constituted, though TRIORIENT opted not to enter a defense, and, upon CARGILL's motion, by Partial Final Award dated October 5, 2020, directed TRIORIENT to post security in the amount of \$1,600,000.00. See, Exhibit 1.

9. Thereafter, by Final Award dated November 11, 2020, the Panel awarded damages in favor of CARGILL and against TRIORIENT in the amount of \$1,482,717.47, plus interest in the amount of 9% per annum commencing 30 days thereafter. See, Exhibit 2.

10. TRIORIENT has failed to post the security as directed and has failed satisfy any part of the Final Award entered against it.

WHEREFORE, Petitioner, CARGILL, seeks an order:

- (i) Recognizing and confirming the attached Partial Final Award and Award in favor of Petitioner and against Respondent, TRIORIENT,
- (ii) Entering a Judgment in favor of Petitioner and against Respondent in conformity with the attached Final Award in the amount of \$1,482,717.47,
- (iii) Awarding Petitioner interest on said sum in conformity with the attached Final Award at the rate of 9% per annum,
- (iv) Granting Petitioner with such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 1, 2010

Respectfully submitted,

MAHONEY & KEANE LLP
Attorneys for Petitioner
CARGILL INCORPORATED,
OCEAN TRANSPORTATION

By: s/ Garth S. Wolfson
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File No. 12/4495

VERIFICATION

I, Garth S. Wolfson, hereby declare as follows:

1. I am over 18 years of age, of sound mind, capable of making this Verification, am an attorney admitted to practice before this Honorable Court and within the State of New York and competent to verify all matters stated herein.

2. I am counsel for Petitioner, CARGILL INCORPORATED, OCEAN TRANSPORTATION (“CARGILL”).

3. I am fully authorized to make this Verification on Petitioner’s behalf. The reason I make this verification is that CARGILL is not found within this District.

4. I have read the foregoing Petition and the contents thereof are true and accurate to the best of my knowledge, information and belief.

5. The source of my knowledge is information and belief, my review of the relevant file, as well as records furnished to me by the Petitioner, all of which I believe to be true and accurate.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed: New York, New York
December 1, 2020

By: s/ Garth S. Wolfson
Garth S. Wolfson
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